This supplemental response is intended as a full and complete reply to the Office Action dated April 28, 2009, for which a response was filed June 22, 2009, in light of the interview of October 20, 2009.

Claims 1-4 are currently amended in this response.

Claims 5-130 are cancelled.

Claims 131-144 are newly added in this response.

Claims 1-4 and 131-144 are currently pending in the Application.

Claim Objections

The previous Office Action objected to Claims 2-4 and 15 as being of improper dependent form.

Claim 15 has been cancelled.

As best understood, Applicant believes the objection relates to the recitation "for reconciling" within the preamble of Claims 2-4, which was inadvertently not amended when the preamble of Claim 1 was amended previously. Applicant has amended Claims 2-4 to remove the recitation "for reconciling" from the preamble of each of the aforementioned claims.

Applicant believes that no further amendments are necessary to correct the form of Claims 2-4. Claims 2-4 further limit the recitation "actual performance data," found in Lines 2, 6, 8, and 9 of Claim 1, above, and otherwise include all limitations of Claim 1. As such, Applicant believes Claims 2-4 properly depend from Claim 1.

Claim Rejections – 35 USC §112

The previous Office Action rejected Claims 1-4 and 15 under 35 USC §112, first paragraph, as failing to comply with the written description requirement. Specifically, the Office Action noted that the recitations "electronic comparison circuitry" and "complex project" are not found in Applicant's Specification. Applicant respectfully traverses this rejection.

With regard to the recitation "electronic comparison circuitry," Applicant has amended Claim 1 to clarify that the processor is used to compare the actual performance data to the estimated data to determine any discrepancy. This amendment is supported by the disclosure of original Claims 21, 28, and 63, as filed, and throughout the Specification.

With regard to the recitation "complex project," Applicant would submit that sufficient support exists in the specification, as filed, to substantiate this term, as used in the Claims.

Paragraph [0008] references that "[a]s is appreciated by those skilled in the art, converting specifications for complex projects into specific requests for goods/services is extremely time consuming, is often incomplete, and is extremely inefficient … a process is needed that enables a buyer to procure those goods/services necessary to undertake and complete a project …"

Paragraph [0091] recites: "Since delays, rescheduling, and substitutions of goods/services often occur when undertaking a complex project (for example, drilling an oil well), the process also provides for the adaptation of contractual terms, as necessary, by allowing both parties (the buyer and seller) to monitor the progress of the project at any time via a common database."

Paragraph [0106] recites: "As may be appreciated, for complex projects, such as drilling an oil well, the Parameters may be reviewed and modified by numerous geologists, engineers,

rig operators, and others prior to the generation of actual requests for goods/services (Block 342)."

Paragraph [0149] recites: "Other types of complex projects, i.e., other than the oil and gas industry example, may have different components with greater or fewer steps or templates to adequately and accurately capture and describe the Parameters of any particular project and convert those Parameters into RFQs 718."

Further, the disclosures of the applications having serial numbers 09/672,938, 60/236,998, and 60/187,345, incorporated within Applicant's Specification by reference (See Paragraph [0001]), contain additional support for the recitation "complex project."

The Office Action rejected Claims 1, 4, and 15 under 35 USC §112, second paragraph, as being indefinite. Specifically, the Office Action noted that the recitations "actual performance data" of Claim 1 and the recitations "measurement" and "parameter" of Claim 4 are unclear and indefinite. Applicant respectfully traverses this rejection.

With regard to the recitation "actual performance data," throughout the Specification, Applicant refers to actual performance data, the term "actual" used to contrast certain items of data with estimated data. Claim 1 has been amended to further clarify this distinction by referencing that the actual performance data comprises an indication of goods, services, or combinations thereof used for performance of at least a portion of a complex project.

The term "actual performance data" is further clarified and supported, for example, by Paragraph [0153], which states:

> "When the seller completes performance on the project, it provides <u>actual performance data</u> 748 to the IBE system 700. This <u>actual performance data</u> preferably includes both costs for the goods and services provided, and information about the conditions encountered that the Parameters attempted to define. <u>Actual performance data</u> can be

provided by seller-side systems 750 such as accounting programs, and in the case of oil and gas projects, electronic field ticket entry (described later herein in detail). In the oil and gas industry, a field ticket captures many of the actual results of a project, both financial and functional. In general, field ticket or actual data consists of measurements or observations taken during the performance of the project. In a preferred embodiment, such actual data observed may be provided to the IBE system using wireless processing and communications technologies. The <u>actual performance data</u> is used to update the configuration Parameters 752 with the actual information to aid in the request process for future projects involving the same or similar parameters. This actual information may further be stored by the buyer system 754 for historical reference purposes. The actual cost information is also used by the IBE system 700 to reconcile 756 purchase orders, field actuals, and final invoices to provide appropriate payment by buyers to sellers for the completed project."

Applicant would submit that upon a reading of Claim 1, as clarified by the Specification, the term "actual performance data," is sufficiently recited and explained throughout the specification, and is not indefinite.

With regard to the recitation "parameter," Applicant would submit that this term is not varied or indefinite. As described throughout the Specification and original claims, as filed, a parameter can be any feature or component relating to a complex project, including physical, functional, temporal, transactional, and/or geographical parameters. (See, e.g., Original Claim 16) Each project is defined in terms of one or more parameters. (See, e.g., Original Claim 33)

The term "parameter" is further clarified, defined, and supported by Paragraph [0015], which provides numerous examples, and states:

"More specifically, when utilizing the systems and/or processes of the present invention, a buyer specifies <u>parameters</u> that describe a project. Examples of such <u>parameters</u> include the following: physical <u>parameters</u> (e.g., size, weight, height); functional <u>parameters</u> (e.g., able to accelerate from 0 to 60 m.p.h. in less then 6.0 seconds); temporal <u>parameters</u> (e.g., to be delivered by Tuesday); financial <u>parameters</u> (e.g., to cost less than $10.00); transactional <u>parameters</u> (e.g., to be paid by check or money order); and/or geographical parameters (e.g., located in Colorado). The physical, functional, temporal, financial, and/or geographical <u>parameters</u>, or any other <u>Parameters</u> that may be appropriate for completion of the project, are hereafter collectively referred to as "<u>Parameters</u>."

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Each parameter can have a specified value, measurement, or specification, but the identity of each parameter, itself, is not variable or indefinite, nor is the term "parameter" indefinite. (See, e.g., Paragraph [0002], stating "… the present invention relates to an automated process that receives specifications of physical, functional, temporal, financial, transactional and/or geographical parameters from buyers, and matches the buyers with sellers of such goods and/or services that satisfy the parameters and specifications.")

With regard to the recitation "measurement," as described above and throughout the Specification, each parameter has a value. Claim 4 relates to a method for reconciling actual performance data, the actual performance data being comprised of one or more parameters, each parameter having a measurement. Each measurement is a definite value relating to the associated parameter. Claim 4 utilizes the term "measurement" to describe any value that could apply to the associated parameter (see, e.g. Paragraph [0015], copied above). Applicant would argue that use of the term "measurement" in this manner, to encompass a variety of possible values for a parameter, is commonplace among applications for patent, and that Applicant is not required to limit Claim 4 to any specific value.

Claim Rejections – 35 USC §103

The previous Office Action rejected Claim 1 under 35 USC §103(a) as being unpatenable over Puri et al. (7,440,909) in view of Ockman (4,700,318). Applicant respectfully traverses this rejection.

Claim 1, as amended, recites a method for procuring one or more goods and/or services for a complex project in which actual performance data of the complex project is compared with estimated data related to the complex project, to determine the existence of any discrepancies,

and to enable reconciliation of these discrepancies. Applicant's method is specifically adapted for use with complex projects, which typically involve goods and/or services that are requested by a buyer, but are received through any number of potentially variable performances by the seller. Numerous characteristics of performances, by both the buyer and the seller, can vary during the performance of a complex project. As such, estimated data can be associated with a complex project to facilitate an initial request and/or payment, however actual performance data relating to the end result of a complex project can, and often will, differ from the estimated data by the very nature of a complex project, such as the drilling of an oil well. When such discrepancies are noted, it is necessary for the seller to reconcile these discrepancies with the buyer. No existing method is adapted to reconcile these complex projects in the manner described by Applicant.

Specifically, Claim 1 recites a method that is adapted for reconciling complex projects, in contrast to discrete transactions for goods and services involving non-variable performances. Estimated data relating to the complex project is obtained and stored, from any source relating to the complex project. The estimated data includes an initial estimate of the goods and/or services required for performance of at least a portion of the complex project. For example, estimated data could include the information contained within an initial purchase order. Actual performance data is then stored. The actual performance data includes an indication of the goods and/or services actually used for performance of the related portion of the complex project. For example, the actual performance data could include information normally included in any number of invoices and/or field tickets. The actual performance data is then compared to the estimated data to determine a discrepancy therebetween, and a notification of the discrepancy is sent to the seller and/or the buyer. A proposed reconciliation is then received

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from the buyer and/or the seller, which the other party can manually or automatically approve or disapprove.

In the event that the proposed reconciliation is disapproved, documents related to the transaction can remain alive even though the related portion of the complex project has been performed, such that the buyer and seller can continue to communicate, negotiate, make changes to documents, propose alternative reconciliation, or simply account for the discrepancy. (See, e.g., Applicant's Specification as filed, Paragraphs [0196] – [0198]).

For example, when performing a cementing operation on an oil well, it may be initially determined that a first quantity of cement is needed, based on the depth of the well and other parameters. When performing the cementing operation, it may be determined that due to other factors, such as the temperature or pressure of the well, additional cement, additives, or other products or services may be needed. To avoid a costly cessation of drilling operations, a field ticket for the additional goods and/or services can be approved contemporaneously, on-site. Following completion of the cementing operation, the initial purchase order will differ from the actual goods and services provided, creating a discrepancy for which reconciliation is necessary. When performing a complex project, such as operating an oil well, many such transactions are required, resulting in a large number of discrepancies that must be reconciled. The method recited by Claim 1 enables any such discrepancies to be electronically identified and reconciled, providing significant improvements over conventional invoicing and accounting procedures that would otherwise be required.

Puri instead relates to an invention that provides a fixed bill of materials and retrieves real time costing data relating to these fixed materials. Puri attempts to compensate for variations in the cost or value of these selected materials by maintaining real time costing data,

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but does not allow for variable performances by both buyers and sellers, such as variations in the materials.

Specifically, Puri describes an accounting method used to collect and present real time data, through which differing methods for accounting costing can be utilized for actual cost collection and cost presentation. (Puri, Column 1, Lines 10-15) Actual costs of performing a job and obtaining and/or manufacturing an item associated with a business activity are collected, a unique cost identifier is created and associated with the cost, and based upon the cost identifiers, differing accounting costing methods for cost collection and cost presentation can be selected. (Puri, Column 2, Line 66 – Column 3, Line 16)

In the method described by Puri, no estimated data is obtained, and no comparison between estimated data and actual data is performed. Puri teaches away from obtaining estimated data and comparing estimated data with actual performance data to reconcile a transaction. Instead, Puri speaks to the limitations of using estimated data with a fixed bill of materials, and seeks to use only real time actual costing information to avoid these limitations. (Puri, Column 2, Lines 15-21) As such, no reconciliation for discrepancies between estimated data and actual performance data, or approval or disapproval thereof, is taught by Puri. Puri instead teaches away from reconciling such discrepancies by disclosing a system that attempts to avoid the use of reconciliation through the exclusive use of contemporaneous, real-time costing data.

Unlike Applicant's method, Puri does not recognize the problems to be solved when reconciling a complex project, which require use of both estimated data and actual performance data to account for expected changes that occur during performance of a complex project.

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Therefore, Puri fails to teach numerous elements of Claim 1. Specifically, Puri does not teach a method for reconciling complex transactions, as taught by Applicant. Instead, Puri relates to accounting for discrete items of a bill of materials (i.e. performing a job, manufacturing an item), rather than any type of transaction, much less a complex transaction. (See, e.g. Puri, Claim 1)

Puri further does not teach obtaining and storing estimated data, Puri instead describing a need to eliminate use of estimated data and instead collect real time data relating to actual costs. As such, Puri also does not teach comparing estimated data to actual data, providing notice of any discrepancies therebetween, or receiving a proposed reconciliation and approval or disapproval thereof. The method of Puri is not designed, intended, or capable of managing and reconciling one or more transactions of a complex project.

As such, the combination of Puri with Ockman is improper, as Puri teaches away from comparing estimated and actual data to reconcile discrepancies. (See, e.g., Puri, Column 5, Lines 1-4, which states "In contrast, standard costs offer the accountant or decision-maker what is frequently an inaccurate estimation of future costs based on historical data.") The addition of material from Ockman to add estimated data, and notification and reconciliation of discrepancies between estimated data and actual data, contrary to the teachings of Puri, would render the system and method of Puri nonfunctional.

However, independent of the improper combination of Ockman with Puri, Ockman fails to teach each element of Claim 1 not taught by Puri. Therefore, the combination of Puri and Ockman fails to render Applicant's Claim 1 unpatentable.

Ockman describes a system used to visually depict the components, jobs, and interrelationships between the various parts of a construction process, to overcome language

barriers and graphically display information that is difficult to intelligibly communicate using language alone. (Ockman, Column 1, Lines 15-33) A project schedule and current project data are stored in separate memory areas, and the two memories can be compared to identify differences between a current schedule and an original or interim target schedule. (Ockman, Column 3, Lines 52-67) Depicted structural features are displayed in a manner characterized by scheduling concerns, and any items overdue for completion or that otherwise deviate from the schedule can be visually emphasized. (Ockman, Column 2, Lines 23-37)

Ockman does not teach a method for reconciling complex transactions, as taught by Applicant. Instead, Ockman relates to an overall graphical display of a project as it was intended to occur, compared against a graphical display of the current status of a project. (See, e.g. Ockman, Claim 1 and Column 2, Lines 23-62)

The system of Ockman is not designed, intended, or capable of managing and reconciling one or more transactions within a complex project, as taught by Applicant. The only characteristic of a project managed by the system of Ockman is the scheduling of discrete projects in relation to other discrete projects. Any projects that are not on schedule are bolded and/or shaded. (See, e.g. Ockman, Claim 1) As such, Ockman does not teach receiving a proposed reconciliation and approval or disapproval thereof, to enable reconciling of discrepancy within a transaction of a complex project, as taught by Applicant.

Therefore, neither Puri, Ockman, nor the combination of Puri and Ockman teach each element of Claim 1, as amended. Further, as described previously, the combination of Puri and Ockman is improper, as Puri teaches away from Applicant's claimed method, and the teachings of Puri are contrary to a combination with Ockman, which would hinder or render non-functional the system and method of Puri.

Applicant believes that Claim 1, as amended, in light of the remarks presented, is patentable over Puri in view of Ockman and respectfully requests reconsideration of the instant rejection.

The previous Office Action rejected Claims 2-4 and 15 under 35 USC §103(a) as being unpatenable over Puri et al. (7,440,909) in view of Ockman (4,700,318) and further in view of Huberman (5,826,244). Applicant respectfully traverses this rejection.

Huberman fails to teach the elements of Claim 1 not taught by Puri and Ockman.

Huberman relates to an auction system, which by definition includes a binding price for a specified amount of goods or services, the winning price and the goods and services for sale both not subject to variance. As such, Huberman does not address the problems presented by a complex project.

Specifically, Huberman describes a document distribution and auction system relating to transactions for obtaining document services (i.e. printing, copying, etc.). (Huberman, Column 1, Lines 12-22) A broker process acts as an intermediary between a customer process and a supplier process, the broker process being provided with a description of a desired document service. (Huberman, Column 2, Line 64 – Column 3, Line 3) Responsive to the description, an auction is conducted in which a customer or supplier submits a bid, and the broker process establishes a price and proposes a transaction based on the established price, which can then occur automatically. (Huberman, Column 3, Lines 3-14)

Huberman does not teach a method for reconciling complex transactions, as taught by Applicant. Instead, Huberman relates to auctions for discrete, non-complex services, such as performing printing, copying, or shredding jobs. (See, e.g. Huberman, Column 1, Lines 12-22)

Additionally, Huberman does not teach obtaining estimated data, nor actual performance data, as Huberman relates to an auction process in which a transaction is proposed, but does not relate to the actual performance of the transaction. As such Huberman also does not teach comparing estimated data to actual performance data or receiving a proposed reconciliation for a discrepancy and approval or disapproval thereof.

Applicant would therefore also submit that the combination of Huberman with Puri and Ockman is improper. Any cost, accounting, or measurement-related data obtained in relation to an auction conducted using the system and method of Huberman would not constitute estimated data or actual performance data, as taught by Applicant. No motivation exists to combine certain aspects of dissimilar data obtained through the auction system of Huberman with the real time accounting system of Puri and/or the visual scheduling system of Ockman.

Claims 2-4 depend from Claim 1 and contain all limitations thereof. Because Applicant believes Claim 1 is patentable over Puri and Ockman in view of Huberman for the reasons described above, Applicant also believes Claims 2-4 are patentable over the art of record.

Additionally, as the combination of Puri, Ockman, and Huberman is improper, for the reasons described above, Applicant also asserts that the combination of Puri, Ockman, and Huberman fails to teach any of Claims 2-4 individually. Reconsideration of the above rejection is respectfully requested.

Additional References

During the interview of October 20, 2009, the following references were brought to the attention of Applicant, and remarks relating to each of the references were requested:

1) Oracle Method Project Management Handbook (March 1999 [hereafter "Oracle"]);

2) Whitemarsh Project Management: Architecture and Concept of Operations (1999) [hereafter "Whitemarsh"]; and

3) Hendrickson et al., "Project Management for Construction Fundamental Concepts for Owners, Engineers, Architects, and Builders," (1988) [hereafter "Hendrickson"].

Oracle relates, generally, to a system for planning and controlling information technology projects, which are subject to changes in technology. (Oracle, Page 1-2). Each project task is classified as a planning task, which defines a project's scope, a control task, which is performed concurrent with execution steps in furtherance of the project, or a completion task, which ends a project and formalizes acceptance of deliverables. (Oracle, Page 1-5). Project planning and completion steps are each performed at the beginning of a task, and at the task's end. (Oracle, Page 1-9). The project plan serves as the basis against which quality audits are performed. (Oracle, Page 2-15).

The project plan is formed using generally fixed client requirements, contractual agreements, costs, and other factors. (Oracle, Page 3-5). Oracle references the existence of risk when forming a project plan, but does not disclose the expectation of deviations from a plan and the need for subsequent reconciliation, and instead seeks to minimize and control risk. (Oracle, Pages 3-12 and 5-14). Execution of project tasks are then monitored and measured through a phase control process. (Oracle, Page 5-1). Completion of project tasks according to the project plan is then validated through a phase completion process. (Oracle, Page 6-2).

Oracle describes that while changes or updates in the project plan can be made, these changes are incorporated responsive to contractual obligations, client requests, and the like, rather than expected deviations after the project has begun, and adjustments to the project plan are made prior to each phase of a task, rather than responsive to deviations from the project plan. (Oracle, Pages 3-21, 4-12, and 5-6).

Oracle fails to teach each element of the Claims. Specifically, Oracle does not describe obtaining estimated data comprising an initial estimate of goods and/or services required for performance of at least a portion of a complex project, and comparing this estimated data with actual performance data comprising an indication of goods and/or services actually used for performance. Instead, Oracle describes formation of a project plan through negotiation and other processes, affected by various client-imposed and resource-based factors, from which deviation is generally not expected. Additionally, Oracle fails to teach or suggest receipt of a proposed reconciliation and approval or disapproval thereof should a discrepancy from the project plan occur.

Whitemarsh describes a project management system for use with information technology projects that can be subject to inaccurate estimates, conflicting priorities, and similar factors. (Whitemarsh, Page 1). A continuous flow process is proposed, through which multiple, disjointed projects can be scheduled and coordinated with multiple, potentially changing resource areas or capabilities. (Whtiemarsh, Page 5). In use, numerous application request packages are processed in unison, and resources are allocated or current allocations are modified accordingly. (Whitemarsh, Page 7).

Whitemarsh also fails to teach each element of the claims. Unlike the claimed methods, Whitemarsh relates to management of multiple discrete projects where resource availability may

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change, rather than management of complex transactions where an initial estimate of goods and/or services may deviate from those actually necessary, which may in turn deviate from the goods and services actually provided. As such, Whitemarsh does not teach or suggest obtaining estimated data comprising an initial estimate of goods and/or services required for performance of a portion of a complex project, and comparing the estimated data with actual performance data comprising an indication of goods and/or services actually used. Furthermore, Whitemarsh does not disclose identifying a discrepancy between estimated data and actual performance data, and receiving a proposed reconciliation of the discrepancy and approval or disapproval thereof.

Hendrickson relates, generally, to a project management system for construction projects that focuses on cost efficiency for the entirety of a project rather than individual services. (Hendrickson, Pages 1 and 2). In a typical construction project, project scope is determined, an initial cost estimate is obtained, materials are procured, and tasks are scheduled. (Hendrickson, Page 5). Hendrickson notes the existence of potential conflicts and describes use of legal counsel and owner-controlled wrap-up insurance to protect parties from unforeseen risks. (Hendrickson, Page 13). Hendrickson describes changes in the organizational nature of a construction project (i.e. the interactions, scheduling, etc. between differing service providers), and changes in design plans during construction (Hendrickson, Pages 27, 28, 39, and 40). Specifically, Hendrickson notes that the initial estimated duration and cost of a project can vary. (See, e.g. Hendrickson, Pages 47, 87-103, 224, 233-237, and 315). Hendrickson further describes that economic evaluation of projects that relies on estimated costs can be hindered by risk, which can be mitigated through statistics and acquired knowledge from previous data. (Hendrickson, Pages 140, 141, and 191). However, Hendrickson does not disclose identifying discrepancies within a complex transaction, between estimated data, as defined by Applicant,

and actual performance data, as defined by Applicant, and receiving proposed reconciliation of these discrepancies and approval or disapproval thereof. Hendrickson instead relies upon conventional dispute resolution, such as through legal adjudication. (Hendrickson, Pages 220 and 221).

Thus, Hendrickson also fails to teach each element of the claims. Specifically, Hendrickson does not describe obtaining estimated data comprising an initial estimate of goods and/or services required for performance of at least a portion of a complex project, and comparing this estimated data with actual performance data comprising an indication of goods and/or services actually used for performance. Additionally, Hendrickson fails to teach or suggest receipt of a proposed reconciliation and approval or disapproval thereof should a discrepancy from the initial plan occur. Hendrickson instead relies upon conventional methods for scheduling and financing numerous, discrete, non-complex projects relating to construction, and conventional legal adjudication and similar methods for negotiating deviations from initial estimates.

Conclusion

In light of the above discussion, Applicant respectfully submits that the application now stands in prima facie condition for allowance and courteously requests that this application be advanced to issue. The Applicant is of the opinion that no additional fees are required. However, if additional fees are required, the Commissioner is hereby respectfully authorized to deduct such fees from Deposit Account Number 13-2166.

The Examiner is respectfully invited to call the Applicant's representative at 713-355-4200, to discuss any matters that may arise, where such discussion may resolve such matters and place this application in condition for allowance.

Respectfully submitted,

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